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People v. Ramirez, 2015 IL App (1st) 130022 (No. 1-13-0022, 4/22/15)

Defendant argued on appeal that the trial court considered improper factors at sentencing. Defendant conceded that the issue was forfeited, but argued in a single paragraph that it should be considered under the plain-error rule "because consideration of an improper sentencing factor is plain error." Defendant cited **People v. James**, 255 Ill. App. 3d 516 (1st Dist. 1993) for the proposition that the consideration of improper factors at sentencing is plain error.

The Appellate Court held that defendant waived his plain error argument on appeal by failing to "expressly argue, much less develop the argument that either prong of the doctrine is satisfied." The court also noted that the holding of **James**, that every sentencing error involving the consideration of improper factors is plain error, would swallow the rule of forfeiture. The Court thus declined to conduct a plain error analysis and affirmed defendant's sentence.

(Defendant was represented by Assistant Defender Allison Shah, Chicago.)

BATTERY, ASSAULT & STALKING OFFENSES

§7-1(a)(1)

People v. Wrencher, 2015 IL App (4th) 130522 (No. 4-13-0522, 4/30/15)

1. A defendant is entitled to a jury instruction on a lesser-included offense where there is some slight evidence to support the lesser offense and a jury could rationally find the defendant guilty of the lesser offense but acquit him of the greater offense. The Appellate Court held that defendant, who was charged with two counts of aggravated battery of a police officer, was not entitled to a lesser-included jury instruction on the offense of resisting a peace officer. Utilizing the charging instrument approach, the Court found that resisting was a lesser-included offense of the first count of aggravated battery, but that the jury could not have rationally convicted defendant of resisting, but acquitted him of aggravated battery. As to the second count, the Court held that resisting was not a lesser-included offense.

The offense of resisting a peace officer has two elements: (1) the defendant knowingly resisted or obstructed a peace officer in the performance of any authorized act; and (2) the defendant knew the person he resisted or obstructed was a peace officer. 720 ILCS 5/31-1(a). To determine whether resisting was a lesser-included offense of aggravated battery, the Court employed the charging instrument approach. Under this test, the charging instrument need not expressly allege all the elements of the lesser

offense. Instead, the elements need only be reasonably inferred from the language of the charging instrument.

2. The first count of aggravated battery alleged that defendant knowing caused bodily harm to the officer by digging his fingernails into the officer's hand, knowing he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could be reasonably inferred from the language of this count. Although the count did not expressly allege that defendant resisted or obstructed the officer, causing bodily harm increased the difficulty of the officer's actions, and thereby caused resistence or obstruction.

But the Court found that a rational jury could not have found that defendant's act of causing bodily harm could have constituted resisting but not aggravated battery. By knowingly digging his fingernails into the officer's hand, the only charged act of resistence, defendant necessarily committed aggravated battery. Thus it would have been rationally impossible to convict defendant of resisting but acquit him of aggravated battery.

3. The second count of aggravated battery alleged that defendant knowingly made contact of an insulting or provoking nature by spitting blood on the officer's hand, knowing that he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could not be reasonably inferred from the language of this count. Spitting is an act of contempt, not an act of resistence or obstruction. It thus did not show that defendant knew he would obstruct the officer by spitting blood. Instead, it only showed that he knew the officer would be disgusted and provoked.

(Defendant was represented by Assistant Defender Rikin Shah, Ottawa.)

COLLATERAL REMEDIES

§9-1(a)

People v. Wingate, 2015 IL App (5th) 130189 (No. 5-13-0189, 4/20/15)

To establish actual innocence based upon newly discovered evidence, a defendant must show that he would be acquitted of all offenses. It is not enough to show that he would be convicted of a lesser offense. Here defendant presented in his second-stage post-conviction petition newly discovered evidence that would have reduced his conviction from first-degree to second-degree murder. The Appellate Court held that this did not constitute a showing of actual innocence since it only reduced the level of his offense; it did not constitute a complete exoneration. The dismissal of defendant's petition was affirmed.

(Defendant was represented by Assistant Defender Larry O'Neill, Mt. Vernon.)

CONFESSIONS

§10-9

People v. Neese, 2015 IL App (2d) 140368 (No. 2-14-0368, 4/21/15)

Under Supreme Court Rule 402(f), if a plea discussion does not result in a guilty plea then any such discussion is not admissible against the defendant. But not all statements made be a defendant hoping to obtain a concession constitute plea discussions. Any person who voluntarily speaks to the police probably hopes to benefit, and Rule 402(f) was not designed to discourage legitimate interrogation. Rule 402(f) thus does not exclude mere offers to cooperate with the police unless such offers are accompanied by the rudiments of the plea-negotiation process.

Courts employ a two-part test for deciding whether particular statements are part of plea discussions: (1) whether the defendant had a subjective expectation to negotiate a plea, and (2) whether his expectation, assuming it existed, was objectively reasonable.

Here, an officer called defendant about the theft of coins from an apartment building. Defendant stated that he wanted to speak in person to the officer and the complainant. The officer told defendant that if he came to the station and gave a full written confession, he would consider, but not guarantee, charging him with a misdemeanor. When defendant agreed to come to the station, the officer asked him what he would say. Defendant admitted that he took the coins.

The Appellate Court, employing the two-part test, held that Rule 402(f) did not apply to defendant's statements. First, there was no evidence defendant subjectively expected that he was involved in a plea discussion. He never mentioned a plea or indicated that he expected to plead guilty. Second, any belief would not have been reasonable since there was no indication that the officer had the authority to enter into a plea agreement, especially since the officer never mentioned a plea during the conversation.

The Appellate Court reversed the trial court's order suppressing defendant's statements.

(Defendant was represented by Assistant Defender Richard Harris, Elgin.)

COUNSEL

§13-4(b)(2)

People v. Deltoro, 2015 IL App (3d) 130381 (Nos. 3-13-0381 & 3-13-0382, 4/22/15)

The Appellate Court held that defendant's *pro se* post-conviction petition presented an arguable claim that trial counsel was ineffective for failing to advise defendant about the immigration consequences of his guilty plea as required by **Padilla v. Kentucky**, 559 U.S. 356 (2010).

The State argued that defendant's petition was properly dismissed because defendant did not allege that he told counsel he was not a citizen of the Untied States and thus it was unclear whether counsel knew about defendant's immigration status. The Court rejected this argument. Although there are no Illinois cases addressing this issue, the Court noted that **Padilla** did not expressly require a defendant to inform his counsel of his immigration status in order to trigger counsel's duty to inform his client about the immigration consequences of a plea.

Moreover, to require that a defendant apprehend the relevance of his immigration status and affirmatively provide this information to counsel would undermine the very protection **Padilla** sought to provide. Accordingly, defendant need not make these allegations to state an arguable claim of ineffective assistance of counsel.

The Court reversed the first-stage dismissal of defendant's petition and remanded for second-stage proceedings.

(Defendant was represented by Assistant Defender Sean Conley, Ottawa.)

DISORDERLY, ESCAPE, RESISTING AND OBSTRUCTING OFFENSES

§16-2

People v. Wrencher, 2015 IL App (4th) 130522 (No. 4-13-0522, 4/30/15)

1. A defendant is entitled to a jury instruction on a lesser-included offense where there is some slight evidence to support the lesser offense and a jury could rationally find the defendant guilty of the lesser offense but acquit him of the greater offense. The Appellate Court held that defendant, who was charged with two counts of aggravated battery of a police officer, was not entitled to a lesser-included jury instruction on the offense of resisting a peace officer. Utilizing the charging instrument approach, the Court found that resisting was a lesser-included offense of the first count of aggravated battery, but that the jury could not have rationally convicted defendant of resisting, but acquitted him of aggravated battery. As to the second count, the Court held that resisting was not a lesser-included offense.

The offense of resisting a peace officer has two elements: (1) the defendant knowingly resisted or obstructed a peace officer in the performance of any authorized act; and (2) the defendant knew the person he resisted or obstructed was a peace officer. 720 ILCS 5/31-1(a). To determine whether resisting was a lesser-included offense of aggravated battery, the Court employed the charging instrument approach. Under this test, the charging instrument need not expressly allege all the elements of the lesser offense. Instead, the elements need only be reasonably inferred from the language of the charging instrument.

2. The first count of aggravated battery alleged that defendant knowing caused bodily harm to the officer by digging his fingernails into the officer's hand, knowing he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could be reasonably inferred from the language of this count. Although the count did not expressly allege that defendant resisted or obstructed the officer, causing bodily harm increased the difficulty of the officer's actions, and thereby caused resistence or obstruction.

But the Court found that a rational jury could not have found that defendant's act of causing bodily harm could have constituted resisting but not aggravated battery. By knowingly digging his fingernails into the officer's hand, the only charged act of resistence, defendant necessarily committed aggravated battery. Thus it would have been rationally impossible to convict defendant of resisting but acquit him of aggravated battery.

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(Defendant was represented by Assistant Defender Rikin Shah, Ottawa.)

EVIDENCE

§19-10(b)

People v. Barner, 2015 IL 116949 (No. 116949, 4/16/15)

1. Under **Crawford v. Washington**, 541 U.S. 36 (2004), testimonial hearsay may not be admitted at a criminal trial unless the declarant is unavailable and there was a prior opportunity for cross-examination. Pluralities of the U.S. Supreme Court

have held that scientific reports are "testimonial" where the primary purpose of an affidavit or report was to provide *prima facie* evidence of the nature of an analyzed substance and it could be safely assumed that the analyst was aware of the affidavit's evidentiary purpose (**Melendez-Diaz v. Massachusetts**, 557 U.S. 305 (2009)), or the primary purpose for preparing a report on a suspected drunk driver's blood alcohol level was so the report could be introduced at trial (**Bullcoming v. New Mexico**, 564 U.S. ___, 131 S. Ct. 2705 (2011)).

Justice Thomas provided the fifth vote in both **Melendez-Diaz** and **Bullcoming**, and in the former case rejected the plurality's conclusion that whether a report is testimonial depends on its primary purpose. Instead, Justice Thomas believes that extrajudicial statements are testimonial and thus implicate the Confrontation Clause only to the extent they are formalized and solemn. Thus, Justice Thomas would afford testimonial status to such materials as affidavits, depositions, prior testimony, or confessions.

In **Williams v. Illinois**, 567 U.S. ___, 132 S. Ct. 2221 (2012), a four-member plurality found that the Confrontation Clause was not violated by an expert's testimony concerning testing performed by nontestifying analysts because: (1) the testimony was not offered for the truth of the matter asserted, and (2) the Confrontation Clause does not apply to a report concerning testing that was conducted before any suspect was identified and was intended to identify the offender rather than creating evidence to be used against a particular person.

In **Williams**, the fifth vote was again provided by Justice Thomas, who stated that although the testimony was offered for the truth of the matters asserted it lacked the solemnity and formality associated with testimonial evidence.

2. The Illinois Supreme Court concluded that under **Williams**, whether a scientific report is testimonial depends on whether a reasonable person would believe that the report was made for the purpose of proving the guilt of a particular defendant at trial. **People v. Leach**, 2012 IL 111534. The **Leach** court noted the position of the **Williams** dissenters - that a report is testimonial if it is made for the purpose of providing evidence against *any* person - but found that the autopsy reports at issue in that case did not satisfy the standard of either the plurality or dissent.

3. The court concluded that a reasonable person would not believe that the DNA testing in this case was performed for the purpose of proving the guilt of defendant, because the testing was performed before defendant was a suspect and for the purpose of uploading a DNA profile to a statewide law enforcement database. Thus, an expert's testimony concerning testing conducted by other analysts was not testimonial. The court also found that if Justice Thomas's standard was applied, the testimony lacked the formality and solemnity required for a finding that it was testimonial.

The court rejected the argument that where the blood sample on which the testing was performed had been drawn because defendant was a suspect in a murder, the

evidence was testimonial although it was admitted at a trial for unrelated sexual assaults for which defendant was not a suspect at the time of the testing. The court stressed that the reports had been produced for the purpose of solving the unrelated murder and that the analysts could not have known that their reports would become evidence in the sexual assault case.

4. The court also concluded that even if **Crawford** was violated by an expert's testimony concerning additional testing that was subsequently performed by nontestifying analysts, the error was harmless beyond a reasonable doubt. Admission of testimonial hearsay is harmless where the error did not contribute to the verdict obtained at trial. In determining whether an error is harmless, a reviewing court may consider whether the error might have contributed to the conviction, whether the properly admitted evidence overwhelmingly supports the conviction, and whether the improperly admitted evidence is cumulative to properly admitted evidence. The court concluded that in light of the properly admitted evidence, any violation of the right to confrontation concerning the subsequent testing was harmless.

5. In dissent, Justice Kilbride found that **Williams** has no precedential value and stands only for the proposition that under the facts of that case, five justices believed the evidence to be admissible.

(Defendant was represented by Assistant Defender Pam Rubeo, Chicago.)

§19-23(b)

People v. Jones, 2015 IL App (1st) 121016 (No. 1-12-1016, mod. op. 4/22/15)

1. Expert testimony is admissible if the witness is qualified, a foundation is established to show the basis for the expert's opinions, and the testimony will assist the trier of fact in understanding the evidence. An adequate foundation includes the requirement that the proponent show that the expert's testimony is based on reliable information of the type reasonably relied upon by experts in the particular field. The court concluded that whether or not firearm/toolmark analysis is a "hard" or "strict" science, Illinois courts have recognized "that the facts relied upon by experts in toolmark and firearm comparison are of a type reasonably relied upon by experts in the field in order to establish a proper foundation."

2. Here, there was an insufficient evidentiary foundation to admit an expert's opinion that a bullet had been fired from defendant's weapon. The expert testified that he compared test bullets fired from defendant's handgun with the bullet obtained from the decedent's body and concluded that there was sufficient "agreement" to conclude that all of the bullets had been fired from the same weapon. However, the witness conceded that the State Police Crime Lab does not use any specific standard to determine when bullets markings match, but instead relies on an "overall pattern based on class

and individual characteristics." The witness stated there is no "set number of how many lines" that are required for a match and that not all of the "striations . . . have to line up" in order for there to be a match.

Noting that the expert "gave no reason at all to support his expert opinion that there was sufficient agreement and a match between the bullet recovered by the victim and defendant's gun," the court held that the evidentiary foundation was insufficient. The court noted that the expert gave no testimony concerning any individual characteristics of either the firearm or the bullet. In addition, where there is no evidence to explain how an expert reached an opinion, the defense is deprived of any meaningful opportunity to challenge the expert's findings on cross-examination.

3. The admission of the improper expert testimony was not harmless beyond a reasonable doubt where there were no eyewitnesses, defendant's statements to police were consistent with his innocence, and the expert testimony placed the murder weapon in defendant's hands. "Other than perhaps DNA evidence, we can think of no evidence more prejudicial than evidence literally placing the murder weapon in a defendant's hands."

Defendant's conviction for first degree murder was reversed and the cause remanded for a new trial.

GUILTY PLEAS

§24-3

People v. Neese, 2015 IL App (2d) 140368 (No. 2-14-0368, 4/21/15)

Under Supreme Court Rule 402(f), if a plea discussion does not result in a guilty plea then any such discussion is not admissible against the defendant. But not all statements made be a defendant hoping to obtain a concession constitute plea discussions. Any person who voluntarily speaks to the police probably hopes to benefit, and Rule 402(f) was not designed to discourage legitimate interrogation. Rule 402(f) thus does not exclude mere offers to cooperate with the police unless such offers are accompanied by the rudiments of the plea-negotiation process.

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written confession, he would consider, but not guarantee, charging him with a misdemeanor. When defendant agreed to come to the station, the officer asked him what he would say. Defendant admitted that he took the coins.

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The Appellate Court reversed the trial court's order suppressing defendant's statements.

(Defendant was represented by Assistant Defender Richard Harris, Elgin.)

JURY

§§32-4(a), 32-8(b)

People v. Gashi, 2015 IL App (3d) 130064 (No. 3-13-0064, 4/7/15)

Trial courts should not attempt to define reasonable doubt for the jury. The concept of reasonable doubt is self-explanatory and needs no further explanation. Providing a definition of reasonable doubt is more likely to confuse a jury than clarify its meaning.

Noting a split among the Illinois Appellate Courts on this issue, the Appellate Court held here that it was structural error under the second prong of plain error for the trial court to tell the jury during *voir dire* that there is no definition of reasonable doubt, so "that is for you [the jury] to decide." Such a statement implies a broad range of meanings for the concept of reasonable doubt, and it is reasonably likely that the jury would overestimate the latitude it had in defining reasonable doubt.

The dissent did not believe that the trial court's comments were erroneous. Nothing in the court's comments created a reasonable likelihood that the jury believed it could convict on anything less than reasonable doubt.

(Defendant was represented by Assistant Defender Mario Kladis, Ottawa.)

§32-8(i)

People v. Wrencher, 2015 IL App (4th) 130522 (No. 4-13-0522, 4/30/15)

1. A defendant is entitled to a jury instruction on a lesser-included offense where there is some slight evidence to support the lesser offense and a jury could rationally find the defendant guilty of the lesser offense but acquit him of the greater offense. The Appellate Court held that defendant, who was charged with two counts of aggravated battery of a police officer, was not entitled to a lesser-included jury instruction on the offense of resisting a peace officer. Utilizing the charging instrument approach, the Court found that resisting was a lesser-included offense of the first count of aggravated battery, but that the jury could not have rationally convicted defendant of resisting, but acquitted him of aggravated battery. As to the second count, the Court held that resisting was not a lesser-included offense.

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(Defendant was represented by Assistant Defender Rikin Shah, Ottawa.)

SEARCH & SEIZURE

§44-1(a)

Grady v. North Carolina, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (2015) (No. 14–593, 3/30/15)

In a *per curiam* opinion, the Supreme Court held that a "search" occurs under the Fourth Amendment where police attach a device to the body of a convicted sex offender to allow nonconsensual satellite-based monitoring of his or her whereabouts. The cause was remanded for the lower court to determine whether the search was reasonable under the circumstances.

§§44-4(b), 44-4(c), 44-18

People v. Shipp, 2015 IL App (2d) 130587 (No. 2-13-0587, 4/8/15)

1. A **Terry** stop is justified where the police have observed unusual conduct creating a reasonable suspicion that the person has committed or is about to commit a crime. A person's mere presence in an area of expected criminal activity is not enough to support a **Terry** stop. A person's location and the lateness of the hour may contribute to reasonable suspicion, but only when there is no legitimate reason for the person to be in that location at such an hour.

Here, the police received a 911 call at 5 a.m. about a fight involving weapons. Several officers went to the area where the fight had been reported. One of the officers, arriving less than a minute after the dispatch, saw defendant and a female walking on the street less than a block from the reported location of the fight. The officer got out of his car, told them to stop and said they were not free to leave. After other officers arrived, the first officer asked defendant if he could pat him down for weapons. Defendant became agitated, refused the pat-down, and put his hands in pockets. The officers attempted to grab his arms, but defendant broke free and fled a short distance before he was apprehended. The officers searched defendant and found a loaded gun and drugs.

The Appellate Court held that the officer conducted an illegal **Terry** stop without reasonable suspicion. The **Terry** stop occurred when the officer got out of his car, told defendant to stop, and would not allow him to leave. Although the officer was responding to a 911 call, he had no reason to believe defendant was involved in a crime. Defendant was merely walking in a residential area and was not behaving suspiciously.

2. The court also held that, apart from the improper stop, the police did not have reasonable grounds to frisk defendant. In order for a frisk to be permissible, the officer must reasonably believe that defendant is armed and dangerous.

Here, the officer had no reason to believe defendant was armed and dangerous. Although defendant placed his hands in his pockets while he was stopped, that fact was insufficient standing alone to justify a frisk, especially since it was January and the defendant had no gloves. "Ultimately, the police had only a subjective hunch or speculation," and that was insufficient to justify the attempted frisk.

3. The court further found that defendant's flight from the officers did not provide a justification for the subsequent search. Under 720 ILCS 5/7-7, a defendant is not authorized to resist an arrest, even if the arrest is unlawful. And under 720 ILCS 5/31-1(a), it is an offense to resist or obstruct a police officer's authorized act. Together, these two sections make it an offense to resist an illegal arrest, and therefore a defendant who resists an illegal arrest is subject to a legal arrest and search incident to arrest.

But these two sections only apply to an arrest. They do not apply to a **Terry** stop. Here the officers were conducting an illegal **Terry** stop when the defendant resisted their efforts to perform a pat-down search. Since defendant was resisting an illegal **Terry** stop, he was not resisting an authorized act by the officers under section 31-1(a). He therefore committed no crime by fleeing from the officers, and such flight did not provide the officers with a proper basis to arrest and search defendant.

4. The court rejected the State's argument that defendant's flight provided grounds for the subsequent search. Defendant did not flee unprovoked at the sight of the police. Instead, he initially complied with the officer's instructions to stop and submitted to the illegal seizure. A defendant's flight following an unjustified police action cannot be the basis of a proper seizure.

5. The court also rejected the State's argument that defendant's flight broke the causal connection between the illegal stop and the discovery of the gun and drugs. Courts apply a three-part test to determine whether the causal chain between illegal police conduct and the discovery of evidence is sufficiently attenuated to allow the admission of the evidence: (1) the amount of time between the illegality and the acquisition of the evidence; (2) any intervening circumstances; and (3) the purpose and flagrancy of the police misconduct.

Here there was a very short time between the stop and the search and the police conduct in stopping defendant, while not flagrant, was still based on nothing other than defendant's mere presence in the area. The "discovery of the contraband was so tainted by the illegal stop that suppression was appropriate."

(Defendant was represented by Assistant Defender Josh Bernstein, Chicago.)

§§44-12(a), 44-12(c)

Rodriguez v. United States, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (2015) (No. 13-9972, 4/21/15)

1. A routine traffic stop is analogous to a **Terry** stop, and like a **Terry** stop is limited in scope to its underlying justification. The acceptable duration of police questioning during a traffic stop is limited by the "mission" of the seizure, which includes addressing the traffic violation which warranted the stop and attending to related highway safety concerns such as checking the driver's license, determining whether there are outstanding warrants, and inspecting proof of insurance and automobile registration. Because the stop is limited in duration to the time necessary to achieve these purposes, the officer's authority to continue the seizure ends when the purposes are or reasonably should have been completed.

The court acknowledged that the Fourth Amendment permits certain investigations that are unrelated to the stop, such as questioning (**Arizona v. Johnson**, 555 U. S. 323, 330 (2009)) or a dog sniff of the exterior of the car (**Illinois v. Caballes**, 543 U. S. 405 (2005)). It stressed, however, that such unrelated investigations are permitted only where the duration of the stop is not prolonged. In other words, a stop can become unlawful if it extends beyond the time reasonably required to complete the mission of the traffic stop.

2. Here, defendant's car was stopped by a canine officer after it swerved onto the shoulder. After the officer checked the licenses of the driver and passenger, verified the vehicle's registration and proof of insurance, questioned the passenger, and issued a written warning, the officer asked defendant for permission to walk the officer's dog around the vehicle. When defendant refused, the officer instructed defendant to turn off the engine and stand in front of the car until a backup officer arrived.

The second officer arrived after a seven or eight-minute delay. The canine officer then retrieved his dog from his car and walked the dog around defendant's vehicle. The dog alerted on the second pass, and methamphetamine was found in the vehicle.

The Supreme Court concluded that a Fourth Amendment violation occurred when the stop was extended several minutes to wait for the second officer and conduct the dog sniff. First, the lower court erred by finding that the seven to eight-minute delay was *de minimis*. Although **Pennsylvania v. Mimms**, 434 U. S. 106 (1977) held that interests of officer safety outweigh the *de minimis* intrusion on Fourth Amendment rights caused when a lawfully stopped driver was required to exit the vehicle during the stop, the State's interest in officer safety stems from the basic mission of the traffic stop. By contrast, a dog sniff is not connected to roadway safety and is intended to detect evidence of criminal wrongdoing that is unrelated to the basic mission of the stop. "Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular."

Second, the court rejected the prosecution's argument that an officer who expeditiously completes all tasks related to a traffic stop should, in effect, "earn bonus time to pursue an unrelated criminal investigation." Because an officer is required to be reasonably diligent at all times during a traffic stop, an officer who completes a stop expeditiously has merely used "the amount of time reasonably required to complete" the stop's mission. By definition, the Fourth Amendment is violated when a stop is prolonged beyond that point.

The lower court's opinion was vacated and the cause remanded for further proceedings.

SENTENCING

§45-9(c)(3)

People v. Ramirez, 2015 IL App (1st) 130022 (No. 1-13-0022, 4/22/15)

Under 730 ILCS 5/5-8-4(d)(1), consecutive sentences are mandatory where defendant was convicted of a Class X or Class 1 felony and inflicted "severe bodily injury." Here defendant was convicted of the Class X offense of attempt first degree murder involving "great bodily harm." The State argued that the jury's finding of great bodily harm mandated consecutive sentences.

The Appellate Court disagreed. It held that the jury's finding of great bodily harm at trial was not the equivalent of a finding at sentencing that defendant inflicted severe bodily injury. Instead, severe bodily injury requires a degree of harm that is more than great bodily harm. The imposition of concurrent sentences was affirmed.

(Defendant was represented by Assistant Defender Allison Shah, Chicago.)

§45-14(b)

People v. Brown, 2015 IL App (1st) 130048 (No. 1-13-0048, 4/20/15)

1. A sentencing judge is given great discretion in determining a sentence, but such discretion "is not totally unbridled." Under Supreme Court Rule 615, a reviewing court has the power to reduce a sentence if the sentence was an abuse of the trial court's discretion. A reviewing court should proceed with care and should not substitute its judgment for the trial court. A sentence should only be deemed excessive if it is "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense."

The Appellate Court found that the trial court abused its discretion in sentencing defendant (who was 16 years old at the time of the offense) to 25 years for attempt first degree murder. (Defendant's sentence also included a 25-year firearm add-on sentence, for a total of 50 years. The Appellate Court affirmed the 25-year add-on sentence.) The Appellate Court held that (1) the trial court improperly considered uncertain speculative evidence in imposing the sentence and (2) the sentence failed to satisfy the constitutional objective of restoring defendant to useful citizenship.

2. At trial, the victim testified that defendant followed him onto a bus, fired several shots at him, striking him twice in the left ankle and right thigh. The gun apparently jammed, so defendant walked away, played with the gun, and then fired two more shots. In sentencing defendant, the trial court found that but for the fact that gun jammed, defendant would have inflicted more violence and greater harm. The Appellate Court held that this finding was based on "uncertain speculative evidence" since the testimony actually showed that defendant successfully unjammed the gun and fired two more shots. There was thus no evidence that defendant would have inflicted more harm if the gun had not jammed.

3. The Appellate Court also held that defendant's sentence was excessive and did not satisfy the constitutional objective of restoring defendant to useful citizenship. Ill. Const. 1970, art. I, §11. The court found that several factors weighed in favor of defendant's rehabilitative potential, including his age, family support, education, and limited criminal background. The court also noted that a juvenile's lack of "matured judgment" has long been acknowledged by our society. Neuroscience research suggests that the human brain's capacity to govern risk and reward is not fully developed until the age of 25, and most criminals mature out of illegal behavior by middle age.

Despite this "abundance of authority supporting lessened sentences for juvenile offenders," defendant's sentence of 50 years imprisonment would not end until defendant was 66 years old. Such a sentence did not take proper account of defendant's youth and the objective of restoring him to useful citizenship.

The court reduced defendant's sentence to the minimum of six years.

(Defendant was represented by former Assistant Defender Jim Morrissey, Chicago.)

WAIVER - PLAIN ERROR - HARMLESS ERROR

§56-1(b)(9)(a)

People v. Ramirez, 2015 IL App (1st) 130022 (No. 1-13-0022, 4/22/15)

Defendant argued on appeal that the trial court considered improper factors at sentencing. Defendant conceded that the issue was forfeited, but argued in a single

paragraph that it should be considered under the plain-error rule "because consideration of an improper sentencing factor is plain error." Defendant cited **People v. James**, 255 Ill. App. 3d 516 (1st Dist. 1993) for the proposition that the consideration of improper factors at sentencing is plain error.

The Appellate Court held that defendant waived his plain error argument on appeal by failing to "expressly argue, much less develop the argument that either prong of the doctrine is satisfied." The court also noted that the holding of **James**, that every sentencing error involving the consideration of improper factors is plain error, would swallow the rule of forfeiture. The Court thus declined to conduct a plain error analysis and affirmed defendant's sentence.

(Defendant was represented by Assistant Defender Allison Shah, Chicago.)